

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ALHAMBRA-GRANTFORK)	
TELEPHONE COMPANY)	
)	Docket No. 04-0354
Petition for Universal Service Support)	

BRIEF OF
ALHAMBRA-GRANTFORK TELEPHONE COMPANY
ON REHEARING

February 17, 2006

TABLE OF CONTENTS

I.	UNDER THE PARAMETERS OF THE COMMISSION'S OCTOBER 19, 2005 ORDER, AGTC QUALIFIES FOR IUSF SUPPORT IN THE AMOUNT OF \$62,716.00 PER YEAR.	Page 3
II.	AGTC QUALIFIES FOR IUSF SUPPORT BEGINNING ON DECEMBER 17, 2003.	Page 4
III.	THE TESTIMONY OF JAMES STIDHAM, JR. IS BEYOND THE JURISDICTION OF COMMISSION ON REHEARING.	Page 9

INTRODUCTION

On October 19, 2005, the Commission entered its Order in the instant proceeding. On November 17, 2005, AGTC filed its application for Rehearing and Reconsideration. On November 29, 2005, the Commission GRANTED, in part, the application for Rehearing and Reconsideration filed by AGTC. The Commission's Notice of Commission action states:

Notice is also given that the scope of rehearing granted by the Commission is to allow additional evidence and argument on the following issues: (1) Quantification of the federal universal service support offset; (2) Retroactivity of IUSF funding, if any, granted on rehearing.

No other party asked for rehearing. A hearing was held on February 3, 2006, and on that same date the record was marked "heard and taken".

I. UNDER THE PARAMETERS OF THE COMMISSION'S OCTOBER 19, 2005 ORDER, AGTC QUALIFIES FOR IUSF SUPPORT IN THE AMOUNT OF \$62,716.00 PER YEAR, EFFECTIVE DECEMBER 17, 2003.

In the Second Interim Order in docket 00-0233 (Second I.O. or 00-0233 or USF docket) entered on September 18, 2001, the Commission established the Illinois Universal Service Fund (IUSF). The Commission found that utilizing the HAI forward-looking cost study, the cost of services for all local exchange carriers (LECs) exceeded the revenue derived by them under the affordable rate by amounts ranging from \$29,929,720 to \$73,479,482, and rather than establishing a fund between \$29 million and \$73 million, the Commission limited each LEC's funding to its own rate of return (ROR) need showing. Using an ROR calculation agreed to by the parties, the Second I.O. calculated each LEC's ROR on capital at 11.21% and added the annual revenue from all sources less the LEC's costs and less its federal USF support to arrive at the LEC's revenue requirement (which was a negative number) for the funding of each LEC.

In the Order of October 19, 2005 in this proceeding, the Commission reaffirmed the ROR funding qualifications under the Second I.O. and the Second I.O. on Rehearing, except the Commission denied AGTC any IUSF funding because the Commission, for the first time, interpreted the language in 220 ILCS 5/13-301(d) to include federal USF support that is not received until 2 years later due to the federal lag, and AGTC did not provide an estimate of its 2006 federal USF support (Order @ 30-31). Further, the Commission ordered a 5% reduction for the costs of unregulated affiliates.

On November 29, 2005, the Commission granted AGTC a rehearing for the purpose of introducing additional evidence and argument on: "(1) Quantification of the federal universal service support offset" On rehearing, AGTC presented the testimony of Robert C. Schoonmaker who provided the data regarding AGTC's 2006 federal USF. Using NECA's

support estimate, AGTC's 2006 federal USF support was projected to be \$125,348 (AGTC Ex. 1 on rehrg. @ 4). Using NECA's estimate, AGTC adjusted its IUSF calculation according to the terms of the Commission's October 19, 2005 Order. (AGTC Exhibit 1, Attachment 2 on Rehearing reflects the IUSF calculation with the 2006 federal USF adjustment and 5% allocation adjustment (AGTC Ex. 1 on rehrg. @ 6).) AGTC calculated its IUSF support to be \$62,716.00 on an annual basis (AGTC Ex. 1 on rehrg. @ 6). No party challenged AGTC's calculation on rehearing. In fact, Staff witness Bill Voss reviewed AGTC's calculations and he had no corrections or adjustments to AGTC Ex. 1, attachment 2 on rehearing (ICC Staff Ex. 2.0 Revised on rehrg @ 1). Therefore, based upon AGTC Ex. 1, attachment 2 on rehearing, and the absence of any objection from either Staff or AT&T, AGTC qualifies for IUSF support in the amount of \$62,716.00 per year. The Commission should enter an order on rehearing granting AGTC IUSF support in the amount of \$62,716.00 per year.

II. AGTC QUALIFIES FOR IUSF SUPPORT BEGINNING ON DECEMBER 17, 2003.

The Commission's November 29, 2005 notice ordered a rehearing to allow additional evidence and argument on the retroactivity of USF funding, if any, to be granted on rehearing. AGTC interprets the Commission's grant of rehearing on retroactive funding to be limited to determining the amount of retroactive funding AGTC qualifies for, not whether retroactive funding is a good policy (AGTC Ex. 1 on rehrg. @ 8-9). AGTC did not seek a rehearing on the Commission's ruling on retroactive funding, especially since the Commission's ruling was consistent with both AGTC's position and Staff's position in favor of retroactive support. However, AGTC did seek funding (including interest) on rehearing retroactive to December 17, 2003.

The Commission has already decided the policy matter of retroactive support and that decision is not on review on rehearing. The Commission decided that if AGTC qualifies for IUSF support, it should receive retroactive funding on the date its financial statements reflect support. On pages 24-25 of the Commission's October 19, 2005, Order, the Commission explicitly discussed the positions of the parties on retroactive funding and concluded on page 25:

On this issue, based on the record, the Commission finds that if Alhambra were entitled to IUSF funding, such funding should be retroactive to December 17, 2003 if AGTC's financial statements are deemed to justify funding starting that date.

Since none of the parties contested AGTC's IUSF support of \$62,116 per year, the only issue on rehearing is whether AGTC's financial statements justify IUSF support starting on December 17, 2003. Alvin Wilkening testified that in 2003, AGTC began its two-year project to upgrade its outside plant (AGTC Ex. 2 @ 3). AGTC's Ex. 1, attach. 2 on rehearing reflects a need showing of \$62,716 based on 2003 data; therefore, AGTC's financial statements justify support beginning on December 17, 2003, and AGTC has met its burden for retroactive funding. Staff agrees that AGTC should be granted IUSF funding effective December 17, 2003 (ICC Staff Ex. 1.0 Revised on rehrg. @ 3).

Mr. Stidham, of AT&T, testified that it would be "fair and reasonable" to begin any funding to AGTC on the effective date of the Commission's Order on Rehearing (AT&T Ex. 1.3 @ 3). Mr. Stidham ignores the Commission's clear ruling on retroactivity on pages 24-25 of the October 19, 2005 Order, and he instead relies on a sentence in the Commission's October 19, 2005 Order that states:

Alhambra had an opportunity to quantify the particular federal support amounts after the issue was raised, but elected not to do so.
...

Mr. Stidham notes that AGTC requests retroactive support because AGTC argues that it should not being penalized for administrative delays beyond its control (AT&T Ex. 3.1 @ 3). AT&T argues that denying retroactive support would not penalize AGTC financially for administrative delays beyond its control since AGTC had an opportunity to present evidence on its 2006 federal USF support when AT&T raised the issue; therefore, AT&T concludes, AGTC should be precluded from receiving all retroactive funding (AT&T Ex. 1.3 @ 3). Mr. Stidham asserts that AGTC is not being penalized for administrative delays beyond its control because AGTC could have presented information regarding its 2006 federal USF support at some time earlier and that the ratepayers would be the ones penalized for providing retroactive support to AGTC (AT&T Ex. 1.3 @ 4).

AT&T's reliance on language in the October 19, 2005 Order regarding AGTC's opportunity to present evidence of its 2006 federal USF support overlooks the entire administrative process, which was 20 months old at the time the Commission's Order was entered in this case, and the case involved numerous other administrative issues besides AGTC's 2006 federal USF.

AGTC was the first company since the establishment of the Illinois Universal Service Fund to petition for support. There was no established procedure for such a request. On December 17, 2003 AGTC filed a motion with the Commission in Docket 00-0233 requesting the Commission authorize additional IUSF funding. AGTC's initial motion was filed in the original IUSF docket 00-0233 because the parties and administrative law judge agreed on the record that any company seeking a different amount of support should file its request in docket 00-0233/00-0233 and that docket remained open for that purpose. AT&T's predecessor, SBC, filed a motion to dismiss AGTC's motion raising several issues. The issues were then briefed

and in the Fourth Interim Order dated April 7, 2004, in docket 00-0233, on page 8, the Commission acknowledged the agreement that new applications were to be filed in docket 00-0233, stating:

The appropriate forum in which to consider such a request is the Commission's next inquiry in resolving the issues presented by AGTC's motion. Clearly, the parties agreed at the May 7, 2002 status hearing to leave the record in this proceeding open in part to consider requests for changes in USF support. Thus, AGTC can not be faulted for submitting its request via motion in this proceeding.

Nevertheless, the Commission dismissed AGTC's motion, without prejudice, and allowed AGTC to file a petition for IUSF support in a new docket, and AGTC filed its petition in this docket. Just the dispute over the appropriate docket delayed the process several months. Later, AGTC faced numerous innovative issues raised by Staff that resulted in further administrative delays that did not exist in the USF case, docket 00-0233 and which AGTC had no way of anticipating, and Staff still supports retroactive funding for AGTC (ICC Staff Ex. 1.0 Revised on rehrg.).

AGTC sought funding consistent with the procedures used in the Second I.O. and Second I.O. on Rehearing in 00-0233/00-0335 (Cons.) where company-specific ROR information that included income from all sources was used as a cap on the HAI projections. That procedure did not include projecting future federal USF two years into the future. AGTC's witness, Mr. Schoonmaker, discussed the many factors that precluded AGTC from providing a reasonable estimate of 2006 USF funding at the time his testimony was filed. The Commission rejected AGTC's argument on the 2006 federal USF projection, and the Commission issued a new interpretation of 13-301(d) in the Order of October 19, 2005, so any projections presented by AGTC would not have reduced the administrative process by much time at all.

Mr. Stidham also overlooks the equities involved. It is both “fair and reasonable” that AGTC should receive support back to the original filing date. AGTC made its investment in its plant and expended the funds. AGTC is the first company that has been ordered to use its federal USF support two years into the future to calculate its IUSF support. Just as there is a lag in obtaining federal USF support, there is a normal lag in the decision-making process. There is no sound policy reason why AGTC should not receive support beginning on December 17, 2003, especially since its financial statements support funding from that time period. Fairness then dictates that AGTC should receive retroactive funding.

Mr. Stidham argues that ratepayers should not be “penalized” for retroactive rate payments, but ratepayers will not be penalized by retroactive rate payments because all ratepayers, including AGTC’s customers, have enjoyed the benefit of AGTC’s investment in its plant, which has been in place for over two years. Moreover, all parties have benefited today by a more accurate figure of AGTC’s 2006 federal USF support. Had AGTC included a 2006 projection of its federal USF funding in the original case, AGTC almost certainly would have inaccurately estimated its IUSF support. Today, many of the uncertainties that existed during the proceedings in this case have been resolved, such as the 2006 national average cost per loop (NACPL). The NACPL is a major component of each company’s USF support (AGTC Ex. 1 on rehr. @ 3-4). Prior to October of 2005, AGTC did not know what the NACPL would be for 2006 and would have been forced to guess what the NACPL would be for 2006. All parties and the ratepayers benefit from a more accurate calculation of AGTC’s IUSF support. It is only reasonable and fair then that AGTC should receive retroactive funding.

Robert C. Schoonmaker, President of GVNW Consulting, Inc., testified on rehearing on behalf of AGTC. On direct, AGTC sought interest at the statutory rate of 5% per annum

pursuant to the Interest Act in 815 ILCS 205/1 and 205/2 (AGTC Ex. 1 on rehrg. @ 9). Staff opposed any interest, and AT&T opposed any retroactive support. On rebuttal, AGTC modified its interest request to correspond with the interest rate awarded by the Commission in the Second I.O. on Remand dated December 21, 2004, in docket 00-0233/00-2335, which granted interest to other IUSF companies based upon the Commission established rate for customer deposits under 83 Ill.Admin.Code §735.120 (AGTC Ex. 2 on rehrg. @ 2-3); ICC Staff Ex. 1.0 Revised on rehrg. @ 4-5).

On rebuttal, Mr. Schoonmaker suggested that it might be administratively desirable for the Administrator to pay the retroactive funding over a period of six months rather than all at once. AGTC Ex. 3 on rehearing reflects the amount of interest requested at the customer deposit rate beginning in June of 2006 and through the rest of 2006.

III. THE TESTIMONY OF JAMES STIDHAM, JR. IS BEYOND THE JURISDICTION OF COMMISSION ON REHEARING.

220 ILCS 5/10-113 states in part:

The Commission shall receive and consider such application and shall grant or deny such application in whole or in part within 20 days from the date of the receipt thereof by the Commission. In case the application for rehearing is granted in whole or in part the Commission shall proceed as promptly as possible to consider such rehearing as allowed. (Emphasis added.)

Because the Commission is a creature of statute, it may only exercise power expressly delegated to it and any action by the Commission in excess of or unsupported by that authority is void. *Black Hawk Transit Co. v. ICC* (1947), 398 Ill. 542, 552, *People ex rel Illinois Highway Transportation Co. v. Biggs* (1949), 402 Ill. 401, 409. It is clear that the language of 10-113 is mandatory and that 10-113 operates as a *limitation* on the Commission's jurisdiction on rehearing and any rehearing may only be conducted within the statutory framework of 10-113. *Liberty Trucking Co. v. Ill Com. Com.*, 81 Ill.App.3^d 466 (1980). 10-113 directs the Commission to

proceed as promptly as possible to consider “such rehearing as allowed.” Moreover, the Commission is without authority under 10-113 to hold a rehearing on issues that were not presented in an application for rehearing. Although the Commission’s grant of rehearing in this case includes evidence and argument on retroactivity of IUSF funding, if any, AT&T testimony on retroactivity in AT&T Ex. 1.3 exceeds the Commission’s jurisdiction on rehearing because AGTC did not request rehearing on the Commission ruling on retroactivity. AGTC only requested retroactive funding based upon its need showing. It was error for the Administrative Law Judge to deny AGTC’s Motion to Strike AT&T’s Ex. 1.3.

CONCLUSION

WHEREFORE, Alhambra-Grantfork Telephone Company respectfully requests that the Commission enter an order on rehearing consistent with the terms of the Commission’s Order of October 19, 2005 by directing the Administrator of the Illinois Universal Service Fund to collect and pay to Alhambra-Grantfork Telephone Company Illinois Universal Service Support at the rate of \$62,716.00 per year effective December 17, 2003, including interest at the rate for customer deposits under 83 Ill.Admin.Code §735.120 as reflected on AGTC Ex. 3 on rehearing, and for such other and further relief as the Commission deems just.

Respectfully submitted,

Alhambra-Grantfork Telephone Company

By: _____
Gary L. Smith

Loewenstein, Hagen & Smith, P.C.
1204 South Fourth Street
Springfield, IL 62703
Telephone: 217/789-0500
Facsimile: 217/522-6047
E-mail: lexsmith@lhoslaw.com

PROOF OF SERVICE

The undersigned certifies that on February 17, 2006, a copy of Alhambra-Grantfork Telephone Company's Brief on Rehearing was served upon the following person(s) by electronic mail:

Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
E-Mail: mharvey@icc.illinois.gov

Michael R. Borovik
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601
mborovik@icc.illinois.gov

Brandy Bush Brown
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
E-Mail: bbrown@icc.illinois.gov

Larry Jones
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
E-Mail: ljones@icc.illinois.gov

Genio Staranczak
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: gstaranc@icc.illinois.gov

Sarah N. Galioto
Atty. for Verizon North/South Inc.
Sonnenschein Nath & Rosenthal LLP
233 S. Wacker Dr.
Chicago, IL 60606
E-Mail: sgalioto@sonnenschein.com

cc:
Alvin Wilkening
E-Mail: alwilk@agtelco.com

Sarah N. Galioto
Atty. for Verizon North/South Inc.
Sonnenschein Nath & Rosenthal LLP
233 S. Wacker Dr.
Chicago, IL 60606
E-Mail: sgalioto@sonnenschein.com

A. Randall Vogelzang
Verizon Services Group
600 Hidden Ridge
Irving, TX 75038
E-Mail: randy.vogelzang@verizon.com

John E. Rooney
Atty. for Verizon North/South Inc.
Sonnenschein Nath & Rosenthal LLP
233 S. Wacker Dr.
Chicago, IL 60606
E-Mail: jrooney@sonnenschein.com

Francie Brown
AT&T Communications of Illinois, Inc.
215 S. Washington Sq., Ste. 230
Lansing, MI 48933-1812
E-Mail: francesbrown@att.com

David J. Chorzempa
Law Dept.
AT&T Communications of Illinois, Inc.
222 W. Adams St., Ste. 1500
Chicago, IL 60606
E-Mail: dchorzempa@att.com

Nancy J. Hertel
Illinois Bell Telephone Company
Floor 25D
225 W. Randolph St.
E-Mail: nw1783@sbc.com

Sally Briar
AT&T Communications of Illinois, Inc.
222 W. Adams, Ste. 1500
Chicago, IL 60606
E-Mail: sbriar@att.com

Robert C. Schoonmaker
E-Mail: bschoonmaker@gvnw.com

Mr. Thomas Korte
E-Mail: tkorte@gvnw.com

Jeff Gough
jgough@gvnw.com